

FINAL STATEMENT OF REASONS

Watersheds with Threatened or Impaired Values Extension, 2008

[Submitted by Staff for Adoption by BOF on July 9, 2008]

Title 14 of the California Code of Regulations (14 CCR):

Amend:

§ 895.1	Definitions
§ 898	Feasibility Alternatives
§ 914.8 [934.8, 954.8]	Tractor Road Watercourse Crossing
§ 916 [936, 956]	Intent of Watercourse and Lake Protection
§ 916.2 [936.2, 956.2]	Protection of the beneficial Uses of Water and Riparian Functions
§ 916.9 [936.9, 956.9]	Protection and Restoration in Watersheds with Threatened or Impaired Values
§ 916.11 [936.11, 956.11]	Effectiveness and Implementation Monitoring
§ 916.12 [936.12, 956.12]	Section 303(d) Listed Watersheds
§ 923.3 [943.3, 963.3]	Watercourse Crossings
§ 923.9 [943.9, 963.9]	Roads and Landings in Watersheds with Threatened or Impaired Values

UPDATED INFORMATION: OVERVIEW OF FINAL ADOPTED REGULATORY ACTION

The Watersheds with Threatened or Impaired Values (T/I) rules are regulations under the California Forest Practice Rules that define planning and operational requirements for timber harvesting in watershed designated as having “threatened and impaired values.” As defined in the FPRs, T/I watersheds means planning watersheds with State or federally listed threatened, endangered or candidate populations of anadromous salmonids present or where they can be restored.

The T/I rules were scheduled to expire December 31, 2008. On July 9, 2008, the Board adopted a regulation to extend the T/I rules expiration date to December 31, 2009.

General Findings

- The Board finds these regulations are necessary to continue environmental protection measures for populations of anadromous salmonids, until such time that a review of the existing regulations, including a scientific literature, is completed to validate the necessity and standards of the rules.

- The Board finds that a one year extension is necessary to ensure the rule review process and literature review of scientific information regarding the potential impacts of timber harvesting on anadromous salmonids is completed.
- The Board finds that extending the existing regulations will ensure good will among stakeholders and responsible agencies who have been involved in regulatory actions for the protection of anadromous salmonids.

ALTERNATIVES TO THE REGULATION CONSIDERED BY THE BOARD AND THE BOARD'S REASONS FOR REJECTING THOSE ALTERNATIVES

The Board has considered alternatives to the regulation proposed. The alternatives primarily involve various periods of extension of the rule.

The Board has considered several alternatives to the proposed regulation.

Alternative #1: Repeal Existing T/I rules. This alternative would let the existing T/I rules expire without renewal or extension. This alternative was rejected as it would have been inconsistent with on-going salmonid protection strategies.

Alternative #2: Complete the Technical Literature Review prior to expiration of the existing T/I rules. This alternative would have allowed the Board to consider agency, stakeholder, and scientific technical literature during 2008 and consider repeal, adoption or amendments prior expiration of the existing rules. This alternative was rejected as there is not sufficient time to conduct an appropriate literature review, consider regulatory changes, and process regulatory changes prior to the expiration of the existing T/I rules. Existing statute PRC 4551.5 limits the Board to implementing permanent rules by January 1st of each year, necessitating regulatory processing by July 1 of each year. Completion of the literature review and regulatory processing could not reasonably be complete by July, 2009.

POSSIBLE SIGNIFICANT ADVERSE ENVIRONMENTAL EFFECTS AND MITIGATIONS

The Board has not identified any adverse environmental effects as a result of the proposed rules. The proposed rule does not change the existing environmental protection standards in the FPRs deemed necessary to meet the goals of restoring anadromous salmonids population in T/I watersheds as stated in the T/I goals.

ALTERNATIVES CONSIDERED TO THE PROPOSED REGULATORY ACTION THAT WOULD BE AS EFFECTIVE AND LESS BURDENSOME TO AFFECTED PRIVATE PERSONS

Pursuant to GC section 11346.9(a)(4), the Board has determined that no other alternative it considered would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action. Alternative #1, above would have lessened any adverse impact on small business.

EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT ADVERSE ECONOMIC IMPACT ON ANY BUSINESS

The Board staff estimated that this regulation should not have any adverse economic impact on any business. The changes adopted under this rulemaking action would extend the effective date of rules until December 31, 2009. There are no other regulatory changes adopted. As such, there would be no additional economic relief or burden on any impacted business beyond what is imposed by the existing T/I rules.

While extending the T/I regulations would not impose new significant adverse economic impact on any business, the existing T/I rules currently in place were estimated in 2001 to have potential substantial adverse economic impact to affected businesses. The existing T/I rules added protections for impaired watersheds which required retain trees which would previously been harvested and additional requirements for erosion control, watercourse crossings, restoration, monitoring, and selection of alternatives. These measures were expected to increase the cost of harvesting and reduce the numbers of trees removed near streams.

The existing T/I rules were also expected to affect small and large timberland owners by increasing the cost for timber harvesting. These extra costs are associated with planning and operations, and may include but are not limited to: additional planning, construction and maintenance costs for roads and watercourse crossings, additional cost of professional consultations, and costs associated with a reduction in long term sustained yield (LTSY).

Although the Board staff has identified the potential for increased costs associated with the existing T/I Rules, the Board staff also identified the potential for increased benefits. Some of the benefits derived from the change in the rules in 2000 could be attributed to the ability of timberland owners to continue to harvest timber without the restrictions that could result from a determination of "take" by the National Marine Fisheries Service. Benefits will also be derived from potentially enhanced beneficial uses of water for drinking and recreational uses.

ADDITIONAL RELEVANT DOCUMENTS RELIED UPON

The following are additional documents were provided for the Board's consideration during the rulemaking process to supplement previous information submitted to the Board and referenced in the *Initial Statement of Reasons*:

None.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Board has determined the proposed action will have the following effects:

- Mandate on local agencies and school districts: None
- Costs or savings to any State agency: None
- Cost to any local agency or school district which must be reimbursed in accordance with the applicable Government Code (GC) sections commencing with GC § 17500: None
- Other non-discretionary cost or savings imposed upon local agencies: None
- Cost or savings in federal funding to the State: None
- The Board has made an initial determination that there will be no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.
- Cost impacts on representative private persons or businesses: The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- Significant effect on housing costs: None
- Adoption of these regulations will not: (1) create or eliminate jobs within California; (2) create new businesses or eliminate existing businesses within California; or (3) affect the expansion of businesses currently doing business within California.
- Effect on small business: None. The Board has determined that the proposed amendments will not affect small business.
- The proposed rules do not conflict with, or duplicate Federal regulations.

Pursuant to Government Code § 11346.2(b)(5): In order to avoid unnecessary duplication or conflicts with federal regulations contained in the Code of Federal Regulations addressing the same issues as those addressed under the proposed regulation revisions listed in this *Statement of Reasons*; the Board has directed the staff to review the Code of Federal Regulations. The Board staff determined that no unnecessary duplication or conflict exists.

SUMMARY OF LAWS RELATING TO THE REGULATION

The Z'berg - Nejedly Forest Practice Act of 1973 (ref. Division 4, Chapter 8 of the Public Resources Code) establishes the State's interest in the use, restoration, and protection of the forest resources. In this Act, Legislature stated its intent to create and maintain an effective and complete system of regulation for all

timberlands. Public Resources Code Sections 4512, 4513 and 4551, gives the Board the authority to adopt such rules and regulations necessary to assure continuous growing and harvesting of commercial forest tree species; and to protect the soil, air, fish, wildlife and water resources.

PUBLIC COMMENTS AND RESPONSE

Comment L 1-1

The Department of Forestry and Fire Protection states that the initial statement reasoning correctly describes the Board's previous and ongoing efforts to review current information related to habitat requirements and protection of an salmon in order to determine if the rule should be developed. Cal Fire recognizes the importance of continuing this process and remains committed to ensuring that any changes to the rules use the most current research and participation by affected parties. Cal Fire urges the board to adopt the proposed one-year extension the rule package to assure continued protection of salmon, while allowing the Board time to facilitate a scientific review of current regulations for the protection of watersheds with threatened or impaired values

BOF response:

The Board found it was necessary to extend the rules for a one year period to ensure continuity of existing regulations for the protection of anadromous salmonids. The extension is necessary to ensure adequate environmental protection measures are in place until such time that an rule review process and scientific literature review of the rules is completed.

Rule Text Edit: no

Comment L2-1

The Sierra Club California and the Environmental Protection Information Center (EPIC) support the proposed rule package extending the “Threatened or Impaired” (T or I) rules an additional year.

BOF response: See L-1-1

Rule Text Edit: no

Comment L 2- 2

Since the Board originally adopted the T or I rules in 2000, the National Marine Fisheries Service, Department of Fish and Game, and our organizations have repeatedly testified that these rules are not adequate to protect listed salmon in California. During this time period, salmon populations have continued to dwindle, Central Coast Coho have been up-listed to Endangered, Coho have been listed under the California Endangered Species Act, and last month the

Governor declared a state of emergency because of the collapse of the Chinook fishery.

The question before the Board should not be merely whether to extend these rules – the real question facing the Board is whether it will act to fix the known shortcomings of the Forest Practice Rules before California's salmon are extirpated.

BOF response: The extension is necessary to ensure adequate environmental protection measures are in place until such time that the rule review process and scientific literature review of the rules is completed. The review process is intended to evaluate the effectiveness existing T/I rules and provide any changes necessary to improve protection of listed anadromous salmonid species.

Rule Text Edit: no

Comment L 2-3

While we continue to urge the Board to take bolder action, the Board should extend this rule package to prevent the sunset of these rules.

BOF response: See L2-2

Rule Text Edit: no

BEGIN SPEAKER COMMENTS FROM 6/4/08 HEARING

Comment S 1-1

Michelle Diaz, California Forestry Association, supports the rule extension and supports board involvement in the T/I rule review process and workshops. She disagrees with others that the T/I rules will likely not be revised by March 2009.

BOF response: The Board has established the review process to evaluate the effectiveness of the existing T/I rules. The extension was necessary to facilitate completion of this review. The review process of the existing rules is expected to be completed by March 2009 and noticed for regulatory action. This schedule would allow the Board to adopt regulations that would become effective January 1, 2010.

Rule Text Edit: no

Comment S 2-1

Mr. Richard Geinger, Humboldt Watershed Council, felt the rules should be extended for a one year and to get on with the review of the rules and the permanent adoption"

BOF response: The Board has established the review process to evaluate the effectiveness existing T/I rules. The extension was necessary to facilitate completion of this review.

Rule Text Edit: no

Comment S 3-1

Mr. Paul Mason, Sierra Club California, encouraged the Board to extend rules recognizing that the current rules are inadequate to protect salmon.

BOF response: See L2-2

Rule Text Edit: no

File: FSOR T/I Ext 6/9/08